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Peter Vos Jr. v. IML Freight, Inc. : Brief of Appellant

Utah Supreme Court

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

PETER VOS, JR.,
Plaintiff and Appellant,

vs.

IML FREIGHT, INC.,
Defendant and Respondent.

Case No.
13752

BRIEF OF APPELLANT

Appeal from the District Court of Salt Lake County, State of Utah, The Honorable Stewart M. Hansen, Judge

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IN THE

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PETER VOS, JR.,
Plaintiff and Appellant,

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Case No. 13752

BRIEF OF APPELLANT

NATURE OF CASE

Appellant, a third-party beneficiary of certain agreements (R. 35) entered into between his Union and respondent, was discharged without just cause in violation of said agreements and brought action against respondent to be reinstated as an employee of respondent as an over-the-road cab driver, or in the alternative be awarded general and punitive damages suffered by him as result of his employment being unjustly terminated.

DISPOSITION OF CASE IN LOWER COURT

The Court granted respondent's motion for summary judgment and dismissed appellant's complaint with prejudice and upon the merits.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the District Court's judgment of dismissal only as to the defendant, IML Freight, Inc., and entered no objection to the dismissal of IML Freight International, Inc., a defendant in the Court below. Appellant, also, seeks a decision by the Supreme Court directing the lower Court to proceed with the trial of the case on its merits.

STATEMENT OF FACTS

FACTS RELATING TO APPELLANT'S COMPLAINT TO BE REINSTATED AS AN EMPLOYEE OF RESPONDENT OR, IN THE ALTERNATIVE, TO BE AWARDED GENERAL AND PUNITIVE DAMAGES SUFFERED BY APPELLANT AS RESULT OF HIS EMPLOYMENT BEING UNJUSTLY TERMINATED.

Plaintiff from on or about April 5, 1963, to June 4, 1974, was employed by defendant, IML Freight, Inc., as an over-the-road cab driver domiciled at Salt Lake City, Utah. The terms and conditions of his employment with defendant were governed by the provisions of two

collective bargaining labor agreements known as the 1970-1973 National Master Freight Agreement and the Western States Area Over-the-Road Supplemental Agreement (R. 35) and the same will hereafter be referred to as Master Agreement or Supplemental Agreement. These agreements were negotiated between the International Brotherhood of Teamsters and the trucking industry. Plaintiff at the time of his employment with defendant was a member of and represented by Teamsters Local Union 222, which union was subject to and bound by said labor agreements.

A letter signed by a representative of defendant (R. 35) dated June 4, 1973, (R. 31) terminated plaintiff's employment. Article 46, Sec. 1 of the Supplemental Agreement (R. 35) provides:

> The employer shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension shall give at least one (1) warning notice of the complaint against such employee to the employee in writing, and a copy of the same to the Local Union affected . . .

Plaintiff protested his discharge as required by Sec. 3 (b) of Article 46 aforesaid, through his Local Union 222 and hearings were held on the protest as provided by Article 45, Sec. 1 (a) and (b) of the Supplemental Agreement (R. 35).

Local Union 222 and defendant being unable to resolve the protest, hearings were held as provided in Ar-

ticle 45, Sec. 1 (g), P. 18, which provides that the grievance procedures can only be invoked by the authorized union representative or the employer. Hearings were held pursuant to these procedures, one at Boise, Idaho which deadlocked and subsequently in San Francisco, California (Joint Western Area Committee), which ruled in favor of the defendant and against the plaintiff upholding the dismissal. Plaintiff was represented at all the hearings by a union representative furnished to him by the Local Union but was personally present only at the San Francisco hearing.

Plaintiff alleged in his complaint (R. 36, 37 and 38) a cause of action based on his discharge by the defendant without just cause as required by the labor agreements and he further alleged that the discharge damaged him in loss of wages and other benefits incidental to his employment. Defendant answered the complaint (R. 32, 33 and 34) which answer raised an issue of fact as to whether plaintiff was unjustly discharged by defendant. After answering the complaint, defendant filed a motion for summary judgment based on the complaint and plaintiff's answer to request for admissions (R. 22, 23 and 24). Answer 11 (R. 24) of answer to request for admissions, plaintiff asserts that the decision of the Joint Western Area Committee which was only by a majority vote was arbitrary and based on insubstantial evidence and his discharge was without just cause and in violation of his constitutional right of due process as guaranteed in Amendment 14 of the Constitution of the United States.

To the motion for summary judgment (R. 18) and the affidavit (R. 19, 20 and 21) filed by defendant in support of said motion, plaintiff filed an affidavit (R. 10, 11 and 12) in opposition to defendant's affidavit which fully answered defendant's affidavit and plaintiff deposed in his affidavit (R. 11) that his representative at the hearings failed to bring out the true facts, including failure to go into customs, work rules and interpretations (R. 10) which modified the Agreements, nor was plaintiff ever advised what rights he had to bring out the facts at the hearing.

ARGUMENT

POINT I.

PLAINTIFF IS A THIRD-PARTY BENEFICIARY OF THE AGREEMENTS BETWEEN HIS UNION AND THE DEFENDANT (R. 35) WHICH PROVIDES HIS EMPLOYMENT CANNOT BE TERMINATED WITHOUT JUST CAUSE.

Article 46, Sec. 1, at P. 21, Supplemental Agreement (R. 35) unequivocally states, "The Employer shall not discharge nor suspend an employee without just cause . . .". This provision is for the benefit of Union members employed by defendant, and plaintiff, as one of its employees, and a member of the Union, is a third-party beneficiary therof.

Defendant admits plaintiff was a Union member of

Local 222 and covered by the Supplemental Agreement (R. at P. 32 and 33), nor does it dispute that its common law right to discharge an employee for any or no reason was restricted by the agreements (R. 14).

The allegation in plaintiff's complaint that he was discharged without just cause is the heart of the complaint, since he was damaged through loss of his seniority rights and his job and the complaint alleges a cause of action which cannot be resolved by summary judgment.

A favorable verdict in favor of the plaintiff at a trial on the merits would under the terms of the agreements that plaintiff could not be discharged except for just cause empowers the Court to order defendant reinstated on his job.

POINT II.

PLAINTIFF HAS A PROPERTY RIGHT IN HIS SENIORITY RIGHTS ACCUMULATED AS RESULT OF HIS EMPLOYMENT UNDER THE AGREEMENTS.

Article 43, Sec. 1 (a), P. 11, of the Supplemental Agreement provides:

> Seniority rights for employees shall prevail. Seniority rights shall be broken by discharge
> . . .

The law is well settled that seniority rights under

employment contracts are "property rights". *Ledford* v. *Chicago, M., St. P. & P. R. Co.,* (Ill.) 18 N. E. 2d 568, held that railroad switchmen's seniority rights under employment contracts with railroad company are enforceable property rights. *Walker* v. *Pennsylvania-Reading Seashore Lines,* (N. J. Eq.) 61 A. 2d 453, ruled that the seniority right of an employee is a property right and the court had jurisdiction to enforce such right. Among other cases which reached similar conclusions are: *Evans* v. *Louisville & N. R. Co.,* (Ga.), 12 S. E. 2d 611 at P. 615. *Earle* v. *Illinois Cent. R. Co.,* (Tenn.), 167 S. W. 2d 15 at P. 24, 25. *Fine* v. *Pratt,* Tex. Civ. App., 150 S. W. 2d 308, 312. *Aulich* v. *Craigmyle,* (Ky.), 59 S. W. 2d 560.

POINT III.

AN AGREEMENT IS VOID AS AGAINST PUBLIC POLICY WHEN APPLIED TO CONTROVERSY OVER PROPERTY RIGHTS WHICH EXPRESSLY OR BY IMPLICATION EXCLUDES LEGAL PROCEEDINGS.

The thrust of defendant's motion for summary judgment (R. 18) which it tried to bolster by an affidavit (R. 19, 20, 21) and a memorandum of authorities (R. 13, 14, 15, 16) was that the National Master Freight Agreement and the Supplemental Agreement (R. 35) provide the sole machinery to hear and determine grievances between employer and employee and the decision rendered was final and absolute, and excluded legal proceedings on the same grievance.

In *Pearson* v. *Anderburg, et al.*, 28 U. 45, 80 P. 307, decided in 1905 and still the law, the facts were these: The administrator of the estate of a deceased member of a Beneficial Association sued to recover an allowance for funeral expenses provided for by the laws of the Association and the Association refused to pay. Among the defenses, the Association relied on a stipulation between the deceased and the Association which read, "I will seek by remedy for all legal rights on account of said membership or connection herewith in the tribunals of the order only, without resorting to their enforcement . . . to the civil courts".

Justice Straup speaking for the court (80 P. at P. 309) said:

> We have no doubt of the power of members of a voluntary association to restrict themselves, as to matters incidental to the operation of the association, to remedies before tribunals created by the association, the nature and kind of which we need not here consider. We are, however, of the opinion that this case does not fall within such rule. The rights to the moneys due here was a property right, and one created by and growing out of a contract. The fundamental principle of law governing this matter is concisely stated by the Maine Court: "The law, and not the contract, prescribes the remedy, and parties have no more right to enter into stipulations against a resort to the courts for their remedy in a given case than they have to provide a remedy prohibited by law". *Stephenson* v. *Ins. Co.*, 54 Me. 55.

Since plaintiff had seniority property rights, this case should settle any question as to the right of plaintiff to have his grievance adjudicated in the civil courts.

POINT IV.

EXHAUSTION OF GRIEVANCE PROCEDURE PURSUANT TO SUPPLEMENTAL AGREEMENT DO NOT PREVENT PLAINTIFF FROM HAVING HIS GRIEVANCE ADJUDICATED.

Article 45, Sec. 1, at P. 16 of Supplemental Agreement provides:

> "The Union and the Employers agree that there shall be no . . . legal proceedings without first using all possible means of settlement as provided for in this agreement and in the National Agreement if applicable, of any controversy which might arise. Disputes shall be taken up between the Employer and the Local Union involved. Failing adjustment by these parties, the following procedure shall then apply . . .". (The balance of said Article delineates where and by whom the various grievances are to be heard.)

Article 45 supra, applies to all the grievances between the Union and Employers, including those involving grievances of employees, such as in the instant case. This Article specifically states, "Legal proceedings" cannot be commenced without first using all possible means of settlement as provided in the Agreement. Plaintiff

did use all possible means and then proceeded to do what the Agreement did not exclude, commence legal proceedings. Plaintiff submits Article 45 only requires that procedures provided in the Agreements be exhausted before judication is sought by legal proceedings.

POINT V.

THE HEARINGS BEFORE THE GRIEVANCE COMMITTEES DENIED PLAINTIFF DUE PROCESS DUE TO INCOMPETENCE OF HIS UNION REPRESENTATIVE.

Article 45, Sec. 1 (g), P. 18 provides that grievance procedures can only be invoked by the authorized Union Representative or the employer. Plaintiff had no choice as to who could represent him at the hearings and his affidavit (R. 10, 11 and 12) delineates how poorly he was represented.

Neither by his Union or the grievance committee, plaintiff was not told if he had a right to appear by counsel or any other person of his choice.

As a rule in a criminal case, if an accused appears in court by counsel of his choice, he cannot later claim denial of due process, *Lunce, et al., Appts.* v. *Overlade, Warden of the Indiana State Prison*, 244 F. 2d 108, but, when counsel is not of his choice, who incompetently represented the accused, in numerous cases and in vari-

ous jurisdictions new trials have been granted to accused on this point alone. 74 A. L. R. 2d 1390 (ANNO.).

Plaintiff did not receive proper representation at his grievance hearings. Defendant claims the grievance hearingfis are final and, if this is so, any injustice done to the plaintiff could never be corrected. Neither the Master Agreement nor the Supplemental Agreement provide any remedy for a rehearing or an appeal within the grievance procedure when the injured party believes he was damaged by the way he was represented and how the hearings were conducted. Certainly, when a persons's property rights and livelihood are involved, it would be a tragedy to foreclose such a person from seeking relief in the courts.

We respectfully submit that the judgment below should be reversed and the lower court be ordered to proceed with the trial on its merits.

Respectfully submitted,

JOSEPH C. FRATTO

Attorney for Appellant